

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. <u>07- 074</u>
v.	:	DATE FILED: <u>02-14-07</u>
RANDALL G. CONE	:	VIOLATION:
	:	42 U.S.C. § 7413(c)(2)(A) (transportation of asbestos waste without a waste shipment record - 1 count)
	:	18 U.S.C. § 2 (aiding, abetting, and willfully causing)

INFORMATION

COUNT ONE

THE UNITED STATES ATTORNEY CHARGES THAT:

At all times material to this information:

1. Defendant RANDALL G. CONE was a licensed asbestos abatement contractor who owned and operated R. Cone Environmental Services, Inc., an asbestos abatement business based in Philadelphia, Pennsylvania.
2. Defendant RANDALL G. CONE and his company were hired in early 2000 to renovate a building located at 800 North Broad Street in Philadelphia (the “facility”), including the removal of asbestos-containing material. The building was being renovated for use as a charter school. Defendant CONE and his company ultimately received \$235,000 to perform this work.

3. R. Cone Environmental Services employees ultimately removed from the facility more than 260 linear feet or 160 square feet of asbestos-containing material regulated by the Clean Air Act. As defendant RANDALL G. CONE knew, the Clean Air Act regulated the removal, handling and disposal of asbestos-containing material at this job. As defendant CONE further knew, the Clean Air Act regulated such material as a hazardous air pollutant.

4. In the spring of 2000, defendant RANDALL G. CONE hired an individual known to the United States Attorney to bring a semi-trailer to the facility. Defendant RANDALL G. CONE used this trailer, which was old and in poor condition, to store asbestos waste at the facility during its renovation.

5. Defendant RANDALL G. CONE paid this individual between \$400 and \$1,200 to rent the trailer, and to have the individual take the trailer and its load of asbestos waste away from the facility.

6. Defendant RANDALL G. CONE did not prepare or use a waste shipment record required by the Clean Air Act to have the asbestos waste transported from the facility.

7. The individual hired by defendant RANDALL G. CONE to transport the asbestos waste abandoned the trailer and asbestos waste in May or June 2000 in a parking lot on Ferry Avenue in Camden, New Jersey. The trailer and its load of asbestos waste remained there until February 2005, when it was discovered by persons engaged in redeveloping that property. At that time, the trailer contained between 200 to 300 plastic bags filled with regulated asbestos-containing material. The bags were labeled "DANGER ASBESTOS," and had the 800 North Broad Street address on them.

8. The property developers paid approximately \$18,000 to have the trailer and its asbestos waste removed from the property and properly disposed of, in accordance with the Clean Air Act.

THE CLEAN AIR ACT AND RELATED ASBESTOS NESHAP REGULATIONS

9. Congress enacted the Clean Air Act (“CAA”) to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare. 42 U.S.C. § 7401, et seq.

10. The CAA authorized EPA to identify hazardous air pollutants and to establish standards to prevent or limit the emission of hazardous air pollutants into the atmosphere. Those standards established by the EPA are known as the National Emission Standards for Hazardous Air Pollutants (“NESHAP”). 42 U.S.C. § 7412.

11. EPA classified asbestos as a “hazardous air pollutant” under the CAA, due to its association with certain types of lung disease and lung cancer. 42 U.S.C. §§ 7412 (a)(6) and (b); 40 C.F.R § 61.01(a).

12. Pursuant to its authority under the CAA, EPA promulgated NESHAP work practice standards and other regulations governing the renovation of facilities containing asbestos, and the handling of asbestos-containing materials. 42 U.S.C. §§ 7412 (d)(2)(D) and 7412(h).

13. Under NESHAP work practice standards, “regulated asbestos-containing material” (“RACM”) consists of, among other things, “friable” building materials containing more than one percent (1%) asbestos. The term “friable” means material that is capable of being crumbled or reduced to powder by hand pressure when dry. 40 C.F.R. § 61.141.

14. The NESHAP work practice standards apply to an “operator,” that is, a person who operates, controls, or supervises renovation operations concerning a “facility” (such as a building) that has threshold quantities of “regulated asbestos-containing material.” 40 C.F.R. §§ 61.141 and 61.145-61.150. Under the regulations, an asbestos abatement contractor renovating a building is an operator of a facility.

15. The threshold amount of RACM necessary to bring a particular renovation operation within the NESHAP work practice standards and regulations is: (a) at least 260 linear feet on pipes; (b) at least 160 square feet on other facility components; or (c) at least 35 cubic feet of facility components where the length or area could not be measured previously. 40 C.F.R. § 61.145(a)(4).

16. “Facility” means any institutional, commercial, public, industrial, or residential structure, installation, or building. 40 C.F.R. § 61.141.

17. “Renovation” means “altering a facility or one or more facility components in any way, including the stripping or removal of RACM from facility components,” and the term “facility component” means any part of a facility, including equipment. 40 C.F.R. § 61.141.

18. The applicable NESHAP work practice standards define the appropriate procedures for the safe handling and removal of RACM during renovations, so as to prevent emissions of particulate asbestos material into the air. These work practice standards require an operator to complete and maintain a waste shipment record, 40 C.F.R. § 61.150(d)(1), and to deposit all removed asbestos-containing waste material at a waste disposal site that legally can accept such material. 40 C.F.R. § 61.150(b).

19. In or about May or June 2000, in Philadelphia, Pennsylvania, in the Eastern District of Pennsylvania and elsewhere, defendant

RANDALL G. CONE

knowingly transported, and aided, abetted, and willfully caused the transport of, asbestos waste from a facility in Philadelphia without a waste shipment record required by the Clean Air Act.

In violation of Title 42, United States Code, Section 7413(c)(2)(A), and Title 18, United States Code, Section 2.

PATRICK L. MEEHAN
UNITED STATES ATTORNEY